HONOURABLE MRS. JUSTICE T.MEENA KUMARI
&
HONOURABLE MS JUSTICE G. ROHINI

WRIT PETITION No:27446 OF 2007

Dated:26.12.2007

Between:

M/s. Dhatri Rice Industries,
Kesamudram, Warangal District,
Rep., by its Partner T. Satish Kumar.

..Petitioner

And

1. The Commercial Tax Officer,
   Mahabubabad Circle, Warangal District and another.

..Respondents.

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HONOURABLE MRS. JUSTICE T.MEENA KUMARI
&
HONOURABLE MS JUSTICE G. ROHINI

WRIT PETITION No:27446 OF 2007

ORDER: (Per Hon'ble Smt. Justice T. Meena Kumari)

The present writ petition is filed by the petitioner seeking a direction to restrain the 1st respondent from taking any coercive steps for collection of the disputed tax of Rs.3,49,749/-, penalty of Rs.3,49,749/- and interest of Rs.2,472/- for the assessment year 2005-2006, till disposal of the appeal before the Sales Tax Appellate Tribunal.

The main grievance of the petitioner is that an appeal has been preferred before the Sales Tax Appellate Tribunal against the orders passed by the 2nd respondent and the same is pending and that the petitioner has already paid 50% of the disputed tax. While so, taking advantage of the orders passed by the 2nd respondent, the 1st respondent is trying to take coercive steps for collection of the disputed tax, penalty and interest. Hence, the present writ petition is preferred.

Heard the learned Counsel appearing for the petitioner and the learned Special Standing Counsel for Commercial Tax and perused the material available on record.

While relying upon the judgment of a Division Bench of this Court reported in **Delta Lubricants Vs. Deputy Commercial Tax Officer, Vijayawada**[1], the learned Counsel for the petitioner contended that 1st respondent is not justified in levying tax, penalty

and interest in a common order. The learned Counsel further contended that an appeal is pending before the Sales Tax Appellate Tribunal as to the assessment of disputed tax and the petitioner has already paid 50% of the disputed tax and at this stage, taking advantage of the orders passed by the 2nd respondent, if the recovery of the disputed tax and penalty in question is effected, the very purpose of filing the said appeal, which is a statutory remedy that is available to the aggrieved party, would be defeated.

In the facts and circumstances of the case and in view of the pendency of the appeal before the Sales Tax Appellate Tribunal, without expressing any opinion on the merits of the case, We feel it a fit case wherein stay can be granted, but subject to imposition of certain conditions. Accordingly, there shall be stay of recovery of the disputed tax and penalty till the disposal of the appeal pending before the Sales Tax Appellate Tribunal subject to the condition of the petitioner depositing 50% of the disputed tax, within a period of three weeks from today, and the interest in full, within a period of one week from today. However, it is made clear that the amount paid if any, shall be given credit to the above stipulated sum. The tribunal is directed to dispose of the appeal within a period of three months from the date of receipt of a copy of this order.

Subject to the above direction, the writ petition is disposed of. No order as to costs.

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Justice T. Meena Kumari

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Justice G. Rohini

Date: 26th December, 2007
Note:
Communicate by wire
At party's costs.
(BO)
Nn.

HONOURABLE MRS. JUSTICE T.MEENA KUMARI

&

HONOURABLE MS JUSTICE G. ROHINI

WRIT PETITION No:27446 OF 2007

(Order delivered by the Hon'ble Smt. Justice T. Meena Kumari)

26/12/2007

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[1] (2006) 147 STC 462 (AP)